

# Frost Brown Todd<sup>LLC</sup>

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October 8, 2004

Mr. Arthur L. Williams, Director  
Louisville Metro Air Pollution Control District  
850 Barrett Avenue  
Louisville, KY 40204-1745

*Re: Proposed STAR Regulations: Informal Review Period Comments*

Dear Mr. Williams:

On September 16, 2004, the Louisville Metro Air Pollution Control District ("the District") proposed nineteen new and revised regulations as part of the STAR Program to control toxic air emissions in Louisville. The proposed STAR regulations, which apply to minor area sources, such as gasoline stations and dry cleaners, as well as to major and moderate stationary sources, are technically complex and potentially far reaching. Frost Brown Todd LLC offers the following preliminary comments based on our review of the proposed STAR regulations during the brief informal comment period, which began September 16, 2004 and ends on October 8, 2004. Given that the informal comment period is so short and the magnitude of the proposed STAR regulations so great, our comments -- or lack thereof -- should not be construed as comprehensive or as supporting or approving the regulatory package currently proposed by the District. These comments highlight only a handful of the most troubling issues that have come to our attention during this brief review period.

**I. The proposed STAR regulations were developed in the absence of any meaningful public involvement.**

Despite the District's assurances to the contrary, and contrary to the basic tenets of good public policy decision making, the District has developed the proposed regulations in a vacuum. The District has not engaged in an inclusive, meaningful stakeholder process and has provided negligible opportunity for public review and comment on this critical regulatory program. Now the District is rushing forward with Board review without having had time to review public comments in a meaningful manner.

As announced by the District at the beginning of 2004, public involvement on the

proposed air toxic regulations was originally planned to include a few months of informal, external review of the District's initial proposed regulatory package. Following that informal review period, the District would take up to thirty days to review all comments and make appropriate changes to the proposed regulations before submitting the regulatory package to the Strategy Committee of the Louisville Metro Air Pollution Control Board (the "Board"). A public hearing, with a formal public comment period, would be scheduled following the Strategy Committee's review, with the goal of implementing the proposed regulations by the end of the year. As a result of the District's own internal delays, this public process has been dramatically truncated, undercutting the very credibility of the District's proposal.

On January 21, 2004, the Board directed the District to "expeditiously begin the process of developing recommendations for regulations to address the control of air toxics." *Minutes, Regular Meeting of the Louisville Metro Air Pollution Control Board, Strategy Committee Report, January 21, 2004*. On February 18, 2004, the Strategy Committee met and "discussed generically the issues to be decided in developing a toxics program and what is being done around the country in various state toxics programs." *Minutes, Regular Meeting of the Louisville Metro Air Pollution Control Board, Strategy Committee Report, March 17, 2004*. As of March 17, 2004, the District stated that, in response to a request from the Mayor's Office, the District would

propose a comprehensive regulatory toxics emission control abatement program to the Board this year. Within 90 days [or by June 17, 2004], the internal drafting of the regulatory package will be complete. The draft package will then undergo an informal, external review process, which is likely to take a *few months*. Within 30 days after the informal, external review, the District will bring the package for the Board's approval to start the formal public review process, entailing a legal notice, 30-day public comment period, and public hearing.

*Id.* (Emphasis added). At the April 21, 2004 Board Meeting, the District stated that it anticipated having draft regulations within sixty days and starting the "usual informal external review process that includes citizens, environmental groups, and businesses." *Minutes, Regular Meeting of the Louisville Metro Air Pollution Control Board, Strategy Committee Report, April 21, 2004*. Formal review of the proposed regulations by the Board would begin only after the District reviewed any informal comments, made appropriate changes and presented the revised regulatory proposal to the Strategy Committee for its review. *Id.*

On July 21, 2004, more than a month after the proposed regulations were initially supposed to be available, the District indicated that it would be concluding "its detailed internal review of the draft toxics program within the next week" and would "present the package to representatives of the Cabinet for Community Development and the Mayor's Office" for a final review. *Minutes, Regular Meeting of the Louisville Metro Air Pollution Control Board, Staff Reports, July 21, 2004*. The proposed regulations were then to be presented to the public for a thirty to forty-five day informal comment period -- down from a few months -- and revised by the District in response to the informal comments before the District scheduled the package for formal consideration by the appropriate Board Committee. *Id.*

On September 16, 2004, three months after the proposed regulations were initially scheduled to be available, the District finally presented the STAR regulations to the public. On September 23, 2004, the District concurrently presented the STAR regulations to the Strategy Committee for its consideration -- during the informal comment period and without the benefit of informal comments or revisions made in response thereto, as promised by the District. *See Minutes, Regular Meeting of the Louisville Metro Air Pollution Control Board, January 21, 2004, March 17, 2004, April 21, 2004 and July 21, 2004.*

On October 4, 2004, the Strategy Committee was urged by the District to continue its deliberations on the proposed regulation during the formal comment period, which the District recommended should be noticed for public comment by October 15, 2004 -- only one week after the close of the informal comment period -- in order to meet the District's goal of implementing the new regulations by the end of the year.

This brief chronology demonstrates the District's repeated failure to meet promised dates for sharing information with the public and its resulting decisions to deprive the public and interested stakeholders of meaningful involvement in order to stay "on schedule" for meeting an arbitrary deadline for completing the regulatory process by the end of 2004. The District had not, and indeed could not have, reviewed and revised the proposed regulations in response to the public's informal comments prior to submitting the regulatory package to the Strategy Committee because the package was submitted even before the informal comment period was complete. Moreover, the Strategy Committee has not been given sufficient time to complete its review and/or revisions to the proposed regulations before the proposal goes to formal public notice. As a result, the public will essentially be making formal comments on a moving target. Such a scenario is hardly the "fair and reasonable opportunity for review and comment" contemplated by KRS § 77.185(2), especially given the magnitude and impact of the regulatory proposal.

**II. Meaningful public involvement in drafting regulations for the STAR Program is necessary to insure confidence in the regulations, compliance by the regulated community and the District's enforcement of those regulations.**

As described above, the public involvement process followed to date by the District has not been sufficient to address the scope and potential impact of the proposed regulations on Louisville Metro. As an initial matter, the proposed regulations address air toxics county-wide and potentially impact every citizen and business in Louisville Metro -- either directly, such as those sources which may be subject to regulation, or indirectly, such as those who may live or work within Louisville Metro. Despite this broad scope, the District's public involvement process has been simply too narrow, largely focused on a small subset of businesses and citizens in a localized geographic area.

The District's public involvement process has utterly failed to provide adequate opportunities for all stakeholders, from all parts of Louisville Metro, to (i) learn about the *countywide* air toxics issue addressed by the proposed regulations; (ii) consider alternative regulatory efforts, such as addressing mobile and area sources as part of this proposal, rather than

on a post hoc basis; and (iii) provide meaningful feedback to the District for its consideration.

To the extent that the District intends to rely upon the West Jefferson County Task Force ("WJCTF") as a substitute for meaningful public participation on this proposal, the District's reliance is misplaced. The WJCTF, its goals and participants were focused on a problem perceived to be limited to West Jefferson County. As such, it considered a different geographic area, different industries, and a different group of interested citizens, businesses and interest groups. Those interests and issues, and the participants in that process, were limited to West Jefferson County. In contrast, the proposed regulations address air toxics *countywide* and impact *every* business in Jefferson County that emits toxic air contaminants.

And now, in order to meet an arbitrary deadline, the District has compromised an already insufficient public involvement process further by not providing sufficient time for review by the public or the Strategy Committee. The only conclusion that can be drawn from the District's failure to provide ample opportunity for public involvement and its current rush to formal rulemaking is that the District is not interested in what the public or the Strategy Committee has to say about the proposed STAR Program or the proposed regulations.

Without meaningful public participation, adoption of the regulations as proposed by the District will result in a regulatory ambush by the District of the legitimate concerns of regulated businesses, industries and citizens of the *entire* community, not just West Jefferson County. For that reason, a fully developed and engaged stakeholder review process, preferably following EPA's *Public Involvement Policy (May 2003)*, should be undertaken by the District before the proposed regulations are recommended to the Board for public hearing.<sup>1</sup>

Such open public participation will, as noted by EPA, promote mutual trust and confidence between administrative agencies and the public they serve by ensuring that the public has access to timely and accurate information upon which to evaluate risks and consider alternatives. This is especially important in situations where, like here, information regarding risk and the control of risk can be highly scientific and technically complex. *See Public Involvement*. That the regulations, which span ninety-seven pages and include nineteen new or significantly revised regulations, are technically complex is apparent by the fact that it took the District nearly twice as long to draft the proposed regulations and complete its internal review than it anticipated in March 2004. *See Minutes, Regular Meeting of the Louisville Metro Air Pollution Control Board, Strategy Committee Report, March 17, 2004*. Why should the District now expect the public to complete its review in a matter of weeks, when it took the District at least eight months to develop the regulations?

Even accepting, for the sake of argument, that the WJCTF process might have satisfied the need for public involvement up to this point, it is striking that while the District took nearly twice as long as it anticipated in drafting the proposed regulations, it has dramatically shortened and compromised the public review process in order to meet an arbitrary deadline. This is simply bad

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<sup>1</sup> Public Involvement Policy of the U.S. Environmental Protection Agency, May 2003. Available at [www.epa.gov/policy2003/policy2003.pdf](http://www.epa.gov/policy2003/policy2003.pdf).

civics and unfair to the citizens of this community. Continuing the debate about air toxics in an open and cooperative environment, such as that described by EPA, will reduce conflict because individuals, organizations and business will be able to share information -- such as economic costs, benefits, and consequences, and community values, including whether and how to address other air toxic sources, such as mobile or area sources -- and thereby share in the District's mission of protecting human health and the environment. *See Public Involvement Policy*, pp. 2, 11. Because the only way to insure community confidence in regulations developed under the STAR Program is to provide a fully developed and engaged stakeholder process, the District should implement a meaningful, representative, and timely stakeholder process, such as the process used for the state Voluntary Environmental Remediation (Brownfields) Program.

**III. As proposed, the regulations do not satisfy the basic elements of good regulatory rulemaking.**

As a general matter, the purpose of adopting administrative regulations is to make the laws an agency enforces clearer and more specific for the regulated community. Such regulations also establish the procedure or organization necessary for an administrative agency to meet its statutory obligations. As proposed by the District, the regulations do neither.

**A. The proposed regulations do not make the District's laws clearer or more specific for the regulated community because the regulations do not establish a consistent regulatory framework.**

There is no consistent regulatory framework in the proposed regulation by which any existing, expanding or new business in Jefferson County can evaluate the impact of the regulation upon its current or future business. Consider the following examples:

First, Regulation 2.8.2, which applies to all permitted stationary sources, establishes an Environmentally Acceptable Risk standard of 10-in-a-million for carcinogens based on the "sum of the cancer risks from all individual toxic air contaminants from all applicable individual stationary sources." If a single stationary source may petition for an Environmentally Acceptable Risk standard of 7.5-in-a-million for carcinogens, *see* Regulation 2.5.3, on what basis will the District allocate the remaining county-wide risk of 2.5-in-a-million? Which companies will benefit? Will they have to stake a pro-rata claim to the balance? How will the District prevent businesses from racing to "fill up" this extremely limited "risk cup" by being the first through the door to claim a portion of a very small whole?

Second, Regulation 5.01 Section 3 prohibits any air toxic emission in a quantity or duration that could be harmful to the health and *welfare* of humans, animals and plants, and Regulation 5.21, Section 1.1 defines "Best available technology for toxics" or "T-BAT" after the District takes into account energy, environmental, and economic impacts and health and *welfare* benefits. "Welfare" is defined in the proposed regulations as "the effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate; damage to and deterioration of property; hazards to transportation; and effects on economic values and on

personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.” This definition is so broad as to give the District unfettered discretion in its application without giving meaningful direction to the regulated entities and the community. What standards will the District use to determine whether a stationary source harms the weather, for example? What standards will the District use to determine impacts on economic values or personal comfort or well-being? Because the proposed regulations will be interpreted by several District staff members implementing the STAR Program, the District has a recipe for arbitrary and abusive regulatory actions.

Because the proposed regulations do not establish a consistent regulatory framework, existing, expanding or new businesses will be unable to evaluate the effect of the proposed regulations on their businesses. For that reason, the District should revise the proposed regulations following an engaged stakeholder process based on the goals of the community, including consideration of economic and technical feasibility.

**B. The proposed regulations do not meet the other purpose in adopting regulations, namely, to establish the procedures and organization necessary for an administrative agency to meet its statutory obligations.**

Even with the addition of new staff members, the regulatory framework that is established in the proposed regulation will likely overwhelm the District’s organization. Consider these examples:

First, Regulation 1.07 Section 4, a copy of which is attached for your convenience, establishes the reporting requirements for an owner or operator of a process or process equipment whenever excess emissions occur or are likely to occur as a result of a malfunction. This regulation creates redundant, duplicative and burdensome reporting requirements – both for regulated entities and for the District itself.

For each malfunction (including events formerly considered “emergencies”) with excess emissions, an owner or operator is required to make at least four reports to the District. These reports, which must be submitted (1) within one hour of the start of the malfunction, (2) within one hour of when the excess emissions end and in writing by the end of that day, (3) within fifteen days after the excess emissions end and (4) within sixty days after the excess emissions end, contain numerous reporting elements seeking detailed and technical analysis of the malfunction. *See Proposed Regulation 1.07 Section 4.*

Given that 4,193 upsets, including malfunctions, emergencies, start-ups and shutdowns were reported to the District between 1996 and October 2003, *see Courier Journal*, Dec. 21, 2003, it is apparent that hundreds of reports will be filed with APCD, especially since the District has eliminated de minimis releases. Each report and each report element established in the proposed regulation represents a requirement with which the District must ensure compliance. When will the District find the time or the manpower to follow up on such prescriptive reporting requirements, especially given the new permitting and compliance requirements contained elsewhere in the proposed regulations and the fact that the District struggles to meet its current

statutory obligations? Moreover, how did the District determine that such reporting would reduce air toxics?

Second, Regulation 1.06 Section 3 requires specific emissions data for 2004 to be reported in 2005 by Group I Stationary Sources (Title V Operating Permits) and Group 2 Stationary Sources (FEDDOPS and other stationary sources subject to the permit requirements of Section 2.03). When did the District notify these sources that they needed to maintain, compile or record data for CY 2004 so that they could submit it to the District by April 15, 2005? By establishing a requirement without notifying the affected stationary sources, few sources will be able to fully comply, thereby resulting in numerous non-compliances that the District must resolve.

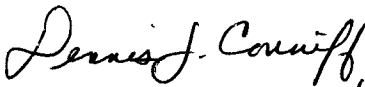
Because enforcement of these and other prescriptive requirements will overwhelm the District, the proposed regulations do not establish effective procedures or organization of the agency, but instead threaten the District's ability to meet its statutory obligations, including issuing permits. For that reason, the District should revise the proposed regulations following an engaged stakeholder process taking into account the District's resources and the goals of the community.

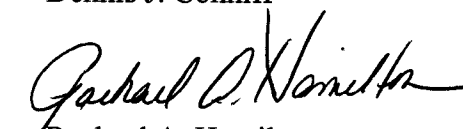
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These comments contain a few notable examples of the considerable deficiencies of the District's proposed regulatory package. They are certainly not comprehensive, nor have we had the opportunity to fully evaluate the regulations in the limited time provided. Frost Brown Todd also generally endorses the comments submitted this week by Greater Louisville, Inc., though again, neither those comments nor the comments of any other interested stakeholder can be viewed as an adequate substitute for a fully developed and meaningful stakeholder process. We are hopeful that the District will reevaluate its current course and embark upon the kind of process that will produce a regulatory program that the entire community can understand, comply with, and be proud of. This proposal certainly falls short of that goal.

We appreciate your consideration of these comments and look forward to your responses. Please contact me at (502) 568-0201 if you have any questions concerning these comments.

Respectfully submitted,

  
Dennis J. Conniff *by T. Hagerby*

  
Rachael A. Hamilton

Mr. Arthur L. Williams  
October 8, 2004  
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**REGULATION 1.07 Excess Emissions During Startups, Shutdowns, and Malfunctions**

**Air Pollution Control District of Jefferson County  
Jefferson County, Kentucky**

**Relates to:** KRS Chapter 77 Air Pollution Control

**Pursuant to:** KRS Chapter 77 Air Pollution Control

**Necessity and Function:** KRS 77.180 provides that the Air Pollution Control Board may make and enforce all needful orders, rules, and regulations necessary or proper to accomplish the purposes of KRS Chapter 77. This regulation establishes the notification, reporting, and operational requirements for the owner or operator of a stationary source when excess emissions occur as a result of a startup, shutdown, or malfunction.

**SECTION 1 Definitions**

Terms used in this regulation that are not defined in this regulation shall have the meaning given to them in Regulation 1.02 *Definitions*.

1.1 "Bypass" means the intentional diversion of air contaminants from air pollution control equipment or process equipment that normally reduces the emission of the air contaminants.

1.2 "Excess emissions" means emissions that exceed an applicable emission standard. If there is not an applicable emission standard for a toxic air contaminant established pursuant to the requirements of Regulation 5.21 *Environmental Acceptability for Toxic Air Contaminants* (an applicable emissions standard would include a surrogate emission standard, such as volatile organic compounds that would include that toxic air contaminant, for which environmental acceptability has been demonstrated pursuant to Regulation 5.21), then, for the purpose of the notification and reporting requirements of this regulation, excess emissions shall also include an appreciable increase in the emissions of a toxic air contaminant above the routine level of emissions that results from a startup, shutdown, or malfunction.

**SECTION 2 Excess Emissions**

2.1 The owner or operator of a process or process equipment has a general duty to ensure that the emissions from the process or process equipment are in compliance with all emission standards at all times. This includes starting up and shutting down the process or process equipment in a manner that the emissions are in compliance with all applicable emission standards and, consistent with safe operating procedures, stopping input feed to the process or process equipment and shutting down the process or process equipment if excess emissions would likely result from a malfunction.

2.2 Excess emissions from a process or process equipment due to startup, shutdown, or malfunction shall be deemed in violation of the applicable emission standard.

2.3 In determining the appropriate enforcement action for excess emissions, the District may consider the following factors:

2.3.1 The duration and frequency of excess emissions during startups, shutdowns, malfunctions,

2.3.2 Whether the excess emissions could have been prevented through careful planning and design,

- 42 2.3.3 Whether the excess emissions are part of a recurring pattern indicative of inadequate  
43 design, operation, or maintenance,
- 44 2.3.4 Whether the process or process equipment was, at all times, operated in a manner  
45 consistent with good practices for minimizing emissions,
- 46 2.3.5 For a malfunction, whether the owner or operator, consistent with safe operating  
47 procedures, stopped input feed to the process or process equipment and shut down the  
48 process or process equipment as soon as possible,
- 49 2.3.6 For excess emissions during a startup or shutdown, the extent to which the owner or  
50 operator complied with the provisions of section 3.6,
- 51 2.3.7 For excess emissions during a malfunction, the extent to which the owner or operator  
52 complied with the provisions of section 4.4, and
- 53 2.3.8 For a malfunction, whether the excess emissions were the result of an unavoidable  
54 malfunction. To be deemed an unavoidable malfunction, the owner or operator of the  
55 process or process equipment shall demonstrate, through properly signed,  
56 contemporaneous operating logs or other relevant evidence, all of the following:
- 57 2.3.8.1 The excess emissions were the result of an identified sudden and reasonably  
58 unforeseeable event beyond the control of the owner or operator, including forces of  
59 nature,
- 60 2.3.8.2 Corrective action to restore normal operation of the process or process equipment  
61 was required,
- 62 2.3.8.3 The excess emissions were not caused by improperly designed equipment, lack of  
63 preventive maintenance, careless or improper operation, or operator error, and
- 64 2.3.8.4 The process or process equipment was, at the time of the malfunction, being properly  
65 operated.
- 66 2.4 Nothing in this regulation shall be construed to restrict the District's discretion to take, at any  
67 time, appropriate enforcement action under KRS Chapter 77 if, upon information supplied  
68 to the District pursuant to this regulation or otherwise available to the District, the District  
69 determines that this action is necessary to protect public health or welfare. Further, nothing  
70 in this regulation shall be construed to restrict any person from seeking injunctive relief from  
71 an excess emission.
- 72 2.5 The owner or operator of a process or process equipment for which there are excess  
73 emissions shall comply with the following requirements, as applicable:
- 74 2.5.1 For startups and shutdowns, Section 3, and
- 75 2.5.2 For malfunctions, Section 4.
- 76 2.6 If a notification or report to the District is required pursuant to this regulation to be in  
77 writing, then compliance with the deadline shall be established as follows:
- 78 2.6.1 If the notification or report is sent via mail, then the date and time as postmarked by the  
79 U.S. Postal Service,
- 80 2.6.2 If the notification or report is sent via facsimile, then the date and time received by the  
81 District as indicated on the printed copy received by the District,
- 82 2.6.3 If the notification or report is sent via electronic mail, then the date and time identified  
83 as sent by the electronic mail received by the District, and
- 84 2.6.4 If the notification or report is hand-delivered to the District's office, then the date and  
85 time received by the District as stamped by the District.
- 86 2.7 The owner or operator of a process or process equipment that is subject to a notification or

reporting requirement pursuant to this regulation may request, and the District may, for cause, approve an extension of the deadline for submitting the information for one or more elements of the notification or report. The owner or operator may make this request by telephone, facsimile or electronic mail. If the request is made by telephone, then the owner or operator shall submit, by the end of that day, a confirmation written request by facsimile, electronic mail, or mail.

### **SECTION 3     Startup or Shutdown**

- 3.1 If excess emissions during any planned startup or shutdown are expected to occur, then the owner or operator of the process or process equipment shall notify the District in writing no later than 3 days before the planned startup or shutdown.
- 3.2 If an unplanned startup or shutdown during which excess emissions are expected to occur is necessitated by events, other than a malfunction, that the owner or operator could not reasonably have foreseen 3 days before the startup or shutdown, then the notification shall be given to the District by telephone, facsimile, or electronic mail within 1 hour after the decision to start up or shut down the process or process equipment was made, and, if the notification is given by telephone, in writing as promptly as possible, but no later than the end of the day during which that decision was made.
- 3.3 If an unplanned startup or shutdown pursuant to section 3.2 begins outside of the District's regular business hours (8:00 a.m. to 5:00 p.m. on Monday to Friday, not including holidays) and the initial written notification pursuant to section 3.2 was not available to the District during regular business hours, then, in addition to that written notification, the owner or operator of the process or process equipment shall leave a message on the District's main telephone line [(502) 574-6000] containing the information required by sections 3.5.1, 3.5.3, 3.5.4, and 3.5.6, and the name and telephone number of a contact person at the stationary source.
- 3.4 An unplanned startup or shutdown during which excess emissions are expected to occur that is necessitated by a malfunction shall be treated as part of the malfunction pursuant to Section 4.
- 3.5 The written planned or unplanned startup or shutdown initial notification pursuant to section 3.1 or 3.2 shall include the following information:
- 3.5.1 The name and location of the stationary source,
- 3.5.2 The name, address, telephone number, and electronic mail address of the person responsible for providing the information required by section 3.5,
- 3.5.3 The process or process equipment involved in the startup or shutdown,
- 3.5.4 The scheduled date and time for the beginning of the startup or shutdown process, the expected duration of the startup or shutdown process, and the expected time period during which excess emissions are expected to occur,
- 3.5.5 The physical and chemical composition and estimated quantity and concentration of excess emissions for each air contaminant,
- 3.5.6 The reason for and necessity of the startup or shutdown,
- 3.5.7 The reason the startup or shutdown could not be accomplished without causing excess emissions, and
- 3.5.8 An explanation as to how the provisions of section 3.6 will be met.
- 3.6 If excess emissions during a startup or shutdown of a process or process equipment are

expected to occur, then the owner or operator of the process or process equipment shall comply with all of the following:

- 3.6.1 All reasonable, available, and practical emission reduction measures, including process equipment design, operating procedures, and pollution prevention measures, shall be used to prevent or minimize excess emissions,
- 3.6.2 The frequency and duration of operation of the process or process equipment in the startup or shutdown mode shall be minimized to the maximum extent practicable,
- 3.6.3 A bypass of any related control equipment shall not occur unless necessary to prevent loss of life, personal injury, or severe property damage, and the extent and duration of any bypass shall be minimized to the maximum extent practicable, and
- 3.6.4 All emission and parametric monitoring systems for the process or process equipment shall be operated unless technically infeasible.
- 3.7 If a person has notified the District pursuant to section 3.1, 3.2, or 3.3 but no excess emission occurred as the result of the startup or shutdown, then the owner or operator of the process or process equipment shall send a written report to the District that includes the name and telephone number of a contact person at the stationary source and the information required by sections 3.8.1, 3.8.3, and 3.8.4, except indicating that no excess emission occurred. The written report may be sent by mail, facsimile, or electronic mail, and shall be sent no later than the end of the next working day following the completion of the startup or shutdown.
- 3.8 No later than the end of the next working day following the completion of a startup or shutdown during which excess emissions occurred, whether or not initial notification of the startup or shutdown pursuant to section 3.1, 3.2, or 3.3 was made to the District, the owner or operator of the process or process equipment shall send a written report to the District that includes the following information:
  - 3.8.1 The name and location of the stationary source,
  - 3.8.2 The name, address, telephone number, and electronic mail address of the person responsible for providing the information required by section 3.8,
  - 3.8.3 The process or process equipment involved in the startup or shutdown,
  - 3.8.4 The actual date and time of the beginning of the startup or shutdown process, the actual duration of the startup or shutdown process, and the actual time period during which excess emissions occurred,
  - 3.8.5 The physical and chemical composition and calculated quantity and concentration of excess emissions for each air contaminant,
  - 3.8.6 An explanation as to how each provision of section 3.6 was met, and
  - 3.8.7 The frequency of excess emissions during startups or shutdowns during the previous 2 years.

#### **SECTION 4 Malfunction**

- 4.1 If excess emissions from a process or process equipment resulting from a malfunction, or from an unforeseen startup or shutdown necessitated by a malfunction, occur or are likely to occur, the owner or operator of the process or process equipment shall, as promptly as possible, but no later than 1 hour following the start of the malfunction, notify the District by telephone, facsimile, or electronic mail.
- 4.2 The initial notification of the malfunction pursuant to section 4.1 shall include the following information:

- 175 4.2.1 The name and location of the stationary source,  
176 4.2.2 The name, address, telephone number, and electronic mail address of the person  
177 responsible for providing the information required by section 4.2,  
178 4.2.3 The process or process equipment involved in the malfunction,  
179 4.2.4 The date and time of the beginning of the malfunction, the estimated time before,  
180 consistent with safe operating procedures, input feed to the process or process equipment  
181 will be stopped and the process or process equipment shut down or the process or process  
182 equipment is returned to normal operation, whichever is earlier (the excess emissions  
183 end), and the estimated time period during which excess emissions are likely to occur,  
184 4.2.5 To the extent that it can reasonably be determined within the context of the  
185 circumstances, the physical and chemical composition and estimated quantity and  
186 concentration of excess emissions for each air contaminant,  
187 4.2.6 If known or suspected, the likely cause of the malfunction, and  
188 4.2.7 If applicable and known, the reason the processes or process equipment will not be shut  
189 down immediately, consistent with safe operating procedures.
- 190 4.3 If the initial notification pursuant to section 4.1 is required to be made at a time outside of  
191 the District's regular business hours (8:00 a.m. to 5:00 p.m. on Monday to Friday, not  
192 counting holidays), then, in addition to that initial notification, the owner or operator of the  
193 process or process equipment shall leave a message on the District's main telephone line  
194 [(502) 574-6000] containing the information required by sections 4.2.1, 4.2.3, 4.2.4, 4.2.6,  
195 and 4.2.7, and the name and telephone number of a contact person at the stationary source.
- 196 4.4 If excess emissions during a malfunction of a process or process equipment occur or are  
197 likely to occur, then the owner or operator of the process or process equipment shall comply  
198 with all of the following:
- 199 4.4.1 All reasonable, available, and practical emission reduction measures, including process  
200 equipment design, operating procedures, pollution prevention measures, use of off-shift  
201 labor and overtime, and, consistent with safe operating procedures, immediately stopping  
202 input feed to the process or process equipment and shutting down the process or process  
203 equipment, shall be used to prevent or minimize excess emissions,  
204 4.4.2 The frequency and duration of operation of the process or process equipment in a  
205 malfunction mode shall be minimized to the maximum extent practical,  
206 4.4.3 A bypass of any related control equipment shall not occur unless necessary to prevent  
207 loss of life, personal injury, or severe property damage, and the extent and duration of  
208 any bypass shall be minimized to the maximum extent practicable, and  
209 4.4.4 All emission and parametric monitoring systems for the process or process equipment  
210 shall be operated unless technically infeasible.
- 211 4.5 If a person has notified the District pursuant to section 4.1 or 4.3 but no excess emission  
212 occurred as the result of the malfunction, then the owner or operator of the process or process  
213 equipment shall send a written report to the District that includes the name and telephone  
214 number of a contact person at the stationary source, the information required by sections  
215 4.6.1, 4.6.3, and 4.6.4, and the statement that no excess emission occurred. The written  
216 report may be sent by mail, facsimile, or electronic mail, and shall be sent no later than the  
217 end of the next working day after the input feed to the process or process equipment is  
218 stopped and the process or process equipment is shut down or the process or process  
219 equipment is returned to normal operation after the occurrence of a malfunction, whichever

is earlier.

4.6 No later than 1 hour after the excess emissions ended, the owner or operator of the process or process equipment shall notify the District by telephone, facsimile, or electronic mail. If this notification is made by telephone, the owner or operator shall provide written notification by facsimile or electronic mail by the end of that day. The written notification of the end of the malfunction shall include the following information:

4.6.1 The name and location of the stationary source,

4.6.2 The name, address, telephone number, and electronic mail address of the person responsible for providing the information required by section 4.6,

4.6.3 The process or process equipment involved in the malfunction,

4.6.4 The date and time that the excess emissions ended, and

4.6.5 If the initial notification to the District pursuant to section 4.6 was made by telephone, then the time that the telephone notification was made.

4.7 No later than 15 calendar days after the excess emissions ended, the owner or operator of the process or process equipment shall send a written report to the District that includes the following information:

4.7.1 The name and location of the stationary source,

4.7.2 The name, address, telephone number, and electronic mail address of the person responsible for providing the information required by section 4.7,

4.7.3 The process or process equipment involved in the malfunction,

4.7.4 Confirmation of the actual date and time that the excess emissions ended,

4.7.5 The physical and chemical composition and calculated quantity and concentration of excess emissions for each air contaminant,

4.7.6 An explanation as to how each provision of section 4.4 was met, and

4.7.7 Any additional information requested by the District.

4.8 No later than 60 days after the excess emissions ended, the owner operator of the process or process equipment shall send a written report to the District that includes the following information:

4.8.1 An analysis of the cause of the malfunction and the steps that will be taken to prevent or minimize similar occurrences in the future, and

4.8.2 The frequency of excess emissions resulting from malfunctions during the previous 2 years of the same or similar process or process equipment or that occurred because of the same or similar cause.

## **SECTION 5 Extended Malfunction**

5.1 If correcting the excess emissions from a process or process equipment resulting from a malfunction is anticipated to exceed 30 days and the owner or operator does not shut down the process or process equipment, then the owner or operator shall, within seven days of the beginning of the excess emissions, request, in writing, that the District initiate a Board Order. This request shall include a written program outlining a time schedule and corrective actions to abate the excess emissions. The time schedule may include a period for engineering review and analysis of the cause of the excess emissions and design of modifications to effect compliance with the emission standards. The owner or operator shall, in a timely manner, submit all information requested by the District.

5.2 Any resulting Board Order shall include a time schedule and required actions to comply with

264 the emission standards and the appropriate penalty for the excess emissions.

265 Adopted v1/4-19-72; effective 4-19-72; amended v2/9-1-76, v3/6-13-79, v4/11-16-83, v5/12-15-93,  
266 v6/6-21-95, v7/1-17-96.